

REMARKS

A petition for a three (3) month extension of time to respond to this office action and the payment of the required fee of \$510 for a small entity is enclosed herewith.

The examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Friedland et al.

The examiner also rejected claims 2 - 20 under 35 U.S.C. § 103(a) as being unpatentable over Friedland et al. in view of Alaia et al. and Fritsch et al.

Applicant does not agree that the cited references, whether taken alone or when properly combined disclose or show Applicant's invention as claimed.

First, Applicant's claim 1 calls for the buyer's to bid for a product during a first predetermined time period and for the organizer, the assessor and the buyers to confirm the bidding status during a second predetermined time period. Applicant does not agree that Friedland et al. alone teaches such first and second predetermined time periods. Furthermore, it is Applicant's contention that step 4 of claim 1, namely, "if there is more than one bid above a reserve price for the product set by the assessor, step 1, step 2 and step 3 are repeated a predetermined number of times until there is one bid left; the one bid left being the successful bidder", still further differentiates the invention from the primary reference to Friedland et al. alone, or a combination of Friedland et al. in view of Alaia et al. and Fritsch et al. That is, claim 1 is believed to patentably distinguish Applicant's invention from the prior art.

The primary reference to Friedland et al. discloses a method of distributing a live auction over the internet to remote bidders. A human proxy attends the live auction to monitor it and compose status updates for distribution to the remote bidders. The remote bidders may place bids for items that are transmitted to the human proxy who then submits the bids to an auctioneer. When the auction for an item ends or is terminated, the remote bidders may attend auctions for other items.

Applicant's claimed invention does not utilize a human proxy at the live auction. Furthermore, the examiner admits that the primary reference to Friedland et al. fails to disclose or teach step 4 as set forth in independent claim 1. The

examiner, however, argues that this step would be inherent if you have two equal bids and only one item to sell and further argues that it is inherent that the highest bidder gets the item after a continuation of the auction.

Applicant strongly disagrees that it is inherent in Friedland et al. that if there is more than one bid above a reserve price for the product set by the assessor, step 1, step 2 and step 3 are repeated a predetermined number of times (emphasis added) until there is one bid left; the one bid left being the successful bidder. In Friedland et al. the bidding for a specific item in an auction stops after a predetermined time period. Further bidding for such item will not be automatic, as called for in Applicant's claim 1, but can only be continued if a decision is made by an authorized party to continue or reopen the bidding for the item. In this connection, see Fig. 2 and the explanation of the process in column 6, line 14 through column 7, line 20, and in particular, the description of the "open-for-bidding step" 210 in lines 45 - 48 of column 6, where it is stated that only a single lot can inhabit the open-for-bidding state at a given time in a live auction.

Therefore, since claim 1 specifically calls for first and second predetermined time periods in steps 1 and 3, and the repeating of steps 1, 2 and 3 a predetermined number of times, it is not seen how such steps can be inherent. This claimed combination of steps with predetermined time periods and the repeating of the steps a predetermined number of times if more than one bid above a reserve price is present, can only be found in Applicant's disclosure, and as such, can not be made use of by the examiner for a hindsight rejection of Applicant's claim 1 or claims 2 - 20 dependent thereon, or an intervening claim.

The secondary references to Alaia et al. and Fritsch et al. also fail to teach or disclose this claimed combination of steps with predetermined time periods in steps 1 and 3 and the repeating of steps 1, 2 and 3 a predetermined number of times upon the occurrence of there being more than one bid above a reserve price for the product set by the assessor. Nor is there any disclosure, teaching or motivation of how or why the teaching of the patents to Alaia et al. and Fritsch et al. should be combined with that of Friedland et al.

Finally, even if Alaia et al. and Fritsch et al. could somehow be combined with

Friedland et al., the combination would still fail to disclose or teach Applicant's invention as set forth in independent claim 1. And, since dependent claims 2 - 20 more particularly define the novel aspects of the claimed invention, these dependent claims are also believed to be allowable.

None of the prior art, whether taken alone or properly combined, contains teaching or provides motivation of how or why they may be combined to arrive at Applicant's device and/or method as claimed herein.

The examiner's contention that it would be obvious to somehow combine the teachings of Friedland et al., Alaia et al. and/or Fritsch et al. to arrive at Applicant's invention is believed to be incorrect. As set forth in *In Re SANG-SU LEE*, 277 F.3d 1338, 61 U.S.P.Q.2d 1430, the factual inquiry whether to combine references must be thorough and searching and must be based on objective evidence of record. The examiner cannot use conclusory statements to support his subjective belief that it was obvious that a person skilled in the art would have been motivated to combine the prior art.

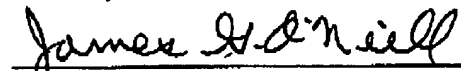
In the rejections set forth by the examiner, the examiner did not set forth specific motivation or teaching in the prior art, but instead relied on conclusory statements. Therefore, the examiner's rejection of claims 2 - 20 are believed to be improper and should be withdrawn.

Since no claims were added by this amendment, no further fee is required.

In view of the above, the Examiner is respectfully requested to allow this application and to notify Applicant accordingly.

If the Examiner has any questions with regard to this amendment he is respectfully requested to contact Applicant's attorney at any of the e-mail, facsimile or telephone numbers set forth below.

Very truly yours,
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